

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Mark E. Fraley et al.

Serial No.: 10/539,531

Case No.: 21272YP

Art Unit:
1625

Filed: June 17, 2005

For: MITOTIC KINESIN INHIBITORS

Examiner:
B. M. Robinson

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMMUNICATION

Sir:

The attached Terminal Disclaimer and remarks are in further response to a Final Office Action that was mailed on January 08, 2009, and which has an unextended period of response that expires on April 08, 2009.

REMARKS

Applicants would like to thank Examiner Robinson for her guidance in a telephone discussion with their representative Nicole Beeler on February 26, 2009. The Examiner indicated that the instant application will be in condition for allowance once a Terminal Disclaimer to co-pending Application No. 10/539,512 is filed.

Nonstatutory Obviousness-type Double Patenting Rejection of Claims 2, 9, 11, 13, 14 and 15

The Examiner has provisionally rejected Claims 2, 9, 11, 13, 14 and 15 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-5, 10, 12, 13 and 14-16 of co-pending Application No. 10/539,512. Applicants herein provide a Terminal Disclaimer to overcome the provisional nonstatutory obviousness-type double patenting rejection over co-pending Application No. 10/539,512.

If a telephonic communication with the Applicants' representative will advance the prosecution of the instant application, please telephone the representative indicated below. Applicants believe no additional fees are due but the Commissioner is authorized to charge any fees required in connection with this response to Merck Deposit Account No. 13-2755.

Respectfully submitted,

By: /Nicole M. Beeler/
Nicole M. Beeler
Registration No. 45,194
Attorney for Applicants

MERCK & CO., INC.
P.O. Box 2000 - RY 60-30
Rahway, New Jersey 07065-0907
Telephone No. (732) 594-1077

Date: February 26, 2009

